

# Using volunteer forces, rather than conscripts or private contractors, is the most legitimate method for organising a military.

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*There are generally three different methods for providing a military force in a war situation: using volunteers, private contractors, or conscripts. **James Pattison** assesses each of these options in terms of their moral legitimacy. Using a 'moderate instrumentalist approach' he argues that both private contractors and conscription raise moral issues which could undermine the legitimacy of a military operation. Although volunteer forces are not without their own problems, they generally offer the most legitimate way of organising a military.*



In their accounts of the requirements of *jus ad bellum*, [just war theorists](#) typically assert that war must have legitimate authority. They tend to overlook the importance of a further, morally significant issue in the ethics of war: the moral legitimacy of the military used to fight the war. Who should carry out the war? Should it be conscripted citizen-soldiers, because this is the fairest way of organising the military? Or should it be a force made up of volunteers, such as that found in the UK and US, because it will be more effective and cohere better with individual autonomy? And should we avoid the employment of private military and security companies?

The legitimacy of the military is morally significant. First, it is a major normative issue in its own right. It concerns matters of major moral importance, such as the fair distribution of the burdens of fighting, the individual autonomy of those required to fight, and the importance of democratic control. Second, the legitimacy of the military will often be a significant factor in the justifiability of a particular war. Indeed, the legitimacy of the military may *determine* whether the war is just. For example, the justifiability of a state's humanitarian intervention may be moot according to the standard just war criteria, but its reliance on conscripts renders its war unjust. Third, the moral legitimacy of the military may also determine whether a particular just war criterion is met: a military that is generally inefficient may be unlikely to meet the just war requirement of a reasonable prospect of success. Fourth, the composition of the military affects the likelihood of the state fighting just or unjust wars.



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The issue of the legitimacy of the military is also politically significant. Since the 1960s and 1970s, many states have replaced conscription-based forces with all volunteer forces. However, volunteer forces have recently been subject to two major challenges. First, there have been widespread criticisms (particularly in the US) of the unrepresentative make-up of these forces and for them being too distant from society – and, subsequently, calls for the reintroduction of the draft to tackle these problems. Second, several states have been moving away from relying purely on volunteers to perform military functions, hiring instead the services of private military and security companies. This privatisation of military force raises the question of whether the large-scale employment of private military and security firms is a morally acceptable way of organising the military.

## The Moderate Instrumentalist Approach

The Moderate Instrumentalist Approach to the legitimacy of the military asserts that three factors largely determine the justifiability of a particular arrangement: (i) a military's effectiveness at fighting just wars and deterring unjust threats, which is the primary, a necessary, and, when *extremely* effective, a sufficient factor in its legitimacy; (ii) a military's subjugation to democratic control, which is a significant and typically necessary factor; and (iii) its proper treatment of military personnel, which, likewise, is a significant and typically necessary factor. How, according to the approach, do each of the military options stand up?

### **Private Military and Security Companies**

Industry proponents often highlight the effectiveness of private military and security companies. This effectiveness derives from their hiring of experienced military professionals with extensive training and expertise. Yet the extensive use of private contractors can be expected to threaten the employers' ability to fight just wars and deter unjust aggressors. First, because it is doubtful whether in several roles private military and security companies will be militarily effective in the field. Private contractors are recruited from databases and do not train together, which harms the cohesion and the preparedness of their operations. More generally, the use of private military and security companies reinforces a narrow, technical view of protection and war fighting as being simply a question of military and security efficacy, thereby ignoring other key – often political – factors that are crucial to fighting a just war and to deterring aggressors successfully.

Moreover, any (alleged) efficiency savings from the hiring of private contractors are likely, at least in part, to result from cuts to areas that are important for the legitimacy of military force. These areas include the mechanisms necessary for effective democratic control, and reductions in labour costs. Vetting procedures are also likely to be compromised, with the probable result of an increase in contractor ill-discipline, thereby weakening private military and security companies' fidelity to the principles of *jus in bello*.

Nevertheless, it might seem that using private contractors is beneficial for democratic control (the second criterion) because it reduces the 'civil-military gap', given that it introduces civilians into the military. However, far from tackling the civil-military gap, the use of private contractors further reduces the role and visibility of the military, both because of the general lack of transparency and knowledge surrounding the industry; and because the regular soldiers who remain focus increasingly on combat operations and thereby become even more distanced from the polity.

It might also seem that the use of private military and security companies is beneficial in terms of the proper treatment of military personnel (the third criterion). This is because private contractors seem to consent freely to participate in a war. However, it cannot be reasonably expected that all contractors will freely consent to their particular operations. There are incentives and opportunities for military and security companies to conceal the roles and risks of what will be a financially lucrative contract for the firm. This is particularly the case for 'third-country nationals': individuals not from the host or sending state. In theatre, thousands of miles from home, it is difficult for a third country national to do much in response to the broken promises about their role. Moreover, they have been subject to notable labour violations, such as not being paid, working long hours, and being supplied with inadequate food, water, and shelter. These issues arise partly because military and security companies, as private firms, want to reduce labour costs, but lack powerful incentives to look after their employees, such as a unionised workforce, enforced international regulations, or strong public pressure. Accordingly, the use of private contractors also raises concerns about the abrogation of the responsibility of care.

Overall, the employment of private military and security companies does poorly according to the Moderate Instrumentalist Approach and is therefore generally illegitimate.

### **Conscription**

For proponents of civic republicanism, the health of the democratic institutions of the state depends on its citizens participating fully in all aspects of the state. Civic republicanism implies, then, a citizen-soldier model of the soldier, where conscripted citizens perform compulsory military service.

The effectiveness of a conscripted force, however, is open to question. A short term of duty means conscripts cannot be trained properly, which is particularly a concern in more complex military operations. A longer term of duty may allow for greater training, but will reduce the number of those drafted overall, which impacts on the case for tackling the civil-military gap, and, given that it is longer, significantly undermines individual autonomy. In addition, a system of universal or random conscription can be expected to conscript many individuals unsuited to performing military operations effectively.

Nevertheless, for civic republican defenders of obligatory military service, a central advantage of conscription is that it leads to only a small civil-military gap. Yet, as most modern armies are smaller than the number of young adults eligible for military service, very few individuals would actually gain experience of military matters; to minimise the gap, a much larger and potentially more unwieldy conscripted army would have to be maintained.

It is also claimed that conscription means that governments will be more responsive to their citizens' views on foreign policy, since citizens will demand that their opinions on foreign policy are taken into account. It also follows, according to this argument, that conscription reduces the number of wars fought since hawkish tendencies in the polity dissipate when citizens have to fight. Moreover, conscription reduces the number of *unjust* – but not just – wars launched: citizens may be willing to fight in defensive wars, but not in foreign interventions. The contrary, however, is true: conscripted armies can generally be expected lead to *more* unjust wars. This seems to be because states with conscripted armies have a ready supply of labour. Furthermore, the ready source of soldiers that conscription provides may mean that wars will be more destructive: leaders will be less worried about the deaths of their own soldiers and so be more willing to take on casualty-heavy operations.

Nor is a state based on conscription likely to reflect its citizens' wishes in its foreign policy. In general only the young are conscripted; and they are likely to possess far less political sway than their older, perhaps more hawkish, fellow citizens. Moreover, citizens' interest in foreign policy does not depend on them taking on the burdens of war fighting.

Conscription also does poorly in regard to the proper treatment of military personnel. Conscription potentially violates self-ownership, since the individual's body is used in a manner that they do not choose. In addition, it denies freedom of occupational choice and freedom of movement (restricted during the period of conscription). If conscientious refusal is not permitted, conscription may also threaten an individual's freedom to select the wars in which they participate and, potentially, their freedom of religion.

It may be replied that in some states with conscription, citizens may perform other civic services. Thus, conscription does not violate individual autonomy since there is a choice whether or not to perform military service. Moreover, certain states allow their conscripts a right of conscientious refusal to participate in a particular war. The problem with this response, however, is that, first, a right of conscientious refusal does not reduce the general problem of the violation of conscripts' autonomy. This is because conscripts would still be required to undertake peacetime terms of service where their freedom is restricted. Second, although the transgression of individual autonomy seems less serious with compulsory civic service, this autonomy is still violated.

### **The All-Volunteer Force**

The effectiveness of the all-volunteer force (AVF) is one of its greatest benefits. A standing, professional army provides the possibility of extensive training and integration: these enhance flexibility since soldiers can prepare for a variety of potential conflicts. It has been argued that the AVF is effective as, first, the recruits perform better because they volunteer; and, second, it can select well-qualified recruits, which means that its recruits are more easily trained and present fewer disciplinary problems.

In terms of democratic control, however, the AVF cannot be expected to do as well. This is because of the civil-military gap between the AVF and the polity; professional, volunteer soldiers can become distanced politically from the polity that they are supposed to defend. This can potentially threaten subjugation to the democratic control of the polity.

Similarly, the current, state-based AVFs cannot be expected to treat military personnel properly. Declining job security, narrowing career options, worsening living and working conditions, and lengthier deployments give the impression that states are no longer keeping their side of the implicit state-soldier covenant. It is also sometimes claimed that, although volunteer soldiers agree to enlist, their consent is not truly free: the AVF recruits from the more disadvantaged members of society. Thus, it may appear to follow that when volunteer soldiers enlist this is the only reasonable option that they possess.

This overstates matters somewhat. It is more accurate to say that the lack of equality of opportunities often only means that joining the AVF is *relatively* a better option, rather than the *only* option, for the poor and disadvantaged than for their more advantaged fellow citizens. Nonetheless, although soldiers may not have been coerced into an AVF, they may often have been manipulated to a certain degree by recruitment officers, given that, like private military and security companies, the AVF recruits from the market. In particular, there are pressures to hire the best candidates at the lowest cost, which is likely to lead, at some point, to some misrepresentation of the roles on offer. The US Army, for instance, has been accused of targeting children in a manner similar to 'predatory grooming', and of lying to student recruits.

However, these concerns about the AVF's degree of democratic control and proper treatment of military personnel are unlikely to mean that many current AVFs are illegitimate. This is for several reasons. First, a number of measures may be adopted to reduce the civil-military gap. For example, programmes such as the Reserve Officers' Training Corps (ROTC) can increase representativeness and a reduction in the size of the military can reduce the seriousness of any gap (since a smaller military poses a smaller threat to the polity). Moreover, even when there is a notable civil-military gap, the military may still be subject to control by the polity because of the socialisation of the military into the norm of accepting civilian command. Second, despite some transgressions, there is generally reason to expect the AVF to maintain its responsibility of care for its personnel. The implicit soldier-state contract means political and military leaders are likely to be pressurised to maintain the proper treatment of military personnel.

Third, recall that effectiveness is the most important factor on the Moderate Instrumentalist Approach. The effectiveness of the AVF means that any failings in its subjugation to democratic control and its treatment of military personnel may not be fatal to its overall legitimacy. If these failings are not grave then the AVF can make up the loss of legitimacy by being highly effective. Overall, then, despite these problems, an AVF may sometimes be likely to possess an adequate degree of legitimacy and, given the more serious failings of the use of private contractors and conscription, is generally the most legitimate way of organising the military.

Accordingly, in our thinking about the justice of a war, we should consider not simply whether the war meets the more commonly cited *jus ad bellum* and *jus in bello* criteria, but also whether it is fought by volunteer soldiers rather than conscripts or private contractors. If it is not, the war is morally more problematic. Thus, we can regard, for instance, the US war in Vietnam as even worse for its reliance on conscripts and, more recently, the US and UK-led action in Iraq as more objectionable given its reliance on private military and security companies.

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*Note: This article gives the views of the author, and not the position of EUROPP – European Politics and Policy, nor of the London School of Economics.*

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